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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,109	09/17/2003	Jay C. Engstrom	33154.9	4766
32300	7590	12/22/2004	EXAMINER	
BRIGGS AND MORGAN, P.A. 2200 IDS CENTER MINNEAPOLIS, MN 55402			LEV, BRUCE ALLEN	
			ART UNIT	PAPER NUMBER
			3634	
DATE MAILED: 12/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,109

Applicant(s)

ENGSTROM, JAY C.

Examiner

Bruce A. Lev

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Claim Rejections - 35 USC 103

Claims 46-50, 53, and 55 are rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Walker, Jr. 5,097,925 in view of Mancini, Jr. 5,842,540.***

As concerns claims 46 and 55, Walker, Jr. sets forth a tree climbing apparatus comprising a first platform having a first flexible strap 1 having a non-scratching surface; and a second platform having a second flexible strap 23 having a non-scratching surface; the platforms comprising support arms (8 and 19 respectively); and a plurality of apertures (2 and 22 respectively). ***What Walker, Jr. does not set forth*** is the “non-locking” spring clips at the ends of the straps engaging respective apertures. However, ***Mancini, Jr. teaches*** the use of “non-locking” spring clips 77 at the ends of the straps engaging respective apertures. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Walker, Jr. by incorporating “non-locking” spring clips at the ends of the straps engaging respective apertures, as taught by Mancini, Jr., in order to provide quicker, easier, and more reliable connecting means between the ends of the straps and their respective apertures.

As concerns claim 47, Walker, Jr. sets forth the apparatus wherein a user can face the tree.

As concerns claim 48, Walker, Jr. sets forth the straps being adjustable.

As concerns claim 49, Walker, Jr. sets forth the straps being formed of resilient

material (viewed as inherent since the straps are adjustable and adapt to different sized trees).

As concerns claims 50, Walker, Jr. sets forth a pair of boot straps (inclusive of member 30).

As concerns claims 53, Walker, Jr. sets forth an adjustable cam strap 23.

Claims 51 and 52 are rejected under 35 U.S.C. **103(a)** as being unpatentable over **Walker, Jr. in view of in view of Mancini, Jr. further in view of Woller 5,971,104.**

Walker, Jr. in view of Mancini, Jr. set forth the tree climbing device, as advanced above, except for the padded seat, back rest, and shelf.

However, **Woller teaches** the use padded tree stand members (inclusive of member 60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the seat, back rest, and shelf of Walker, Jr. in view of Mancini, Jr. by incorporating padded members, as taught by Woller, in order to provide further comfort to a user.

Claim 54 is rejected under 35 U.S.C. **103(a)** as being unpatentable over **Walker, Jr. in view of in view of Mancini, Jr. further in view of Williams 4,802,552.**

Walker, Jr. in view of Mancini, Jr. set forth the tree climbing device, as advanced above, except for the backpack straps. However, **Williams teaches** the use of backpack straps 31 upon a tree stand member. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to modify the tree climbing device of Walker, Jr. in view of Mancini, Jr. by incorporating backpack straps, as taught by Williams, in order to provide means for a user to conveniently carrying the device.

Claim 56 is rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Walker, Jr. in view of in view of Mancini, Jr. further in view of Yerger 6,206,138.***

Walker, Jr. in view of Mancini, Jr. set forth the tree climbing device, as advanced above, except for the spring clip comprising a U-shaped portion and a tensile spring bar. However, ***Yerger teaches*** the use of spring clip 24 comprising a U-shaped portion and a tensile spring bar. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tree climbing device of Walker, Jr. in view of Mancini, Jr. by forming the spring clips as having a U-shaped portion and a tensile spring bar, as taught by Yerger, in order to more quickly and easily detachably connect the ends of the straps to the apertures of the support arms.

Response to Amendment

Applicant's remarks filed November 22, 2004 have been fully considered but they are not deemed to be persuasive.

As concerns remarks pertaining to the spring clips of Mancini, the examiner takes the position that these clips can be considered as "non-locking" since they can be

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(easily) removed and since they do not comprise structural members described as being locking members or act "to lock" the pins into place. As for opening them with only one hand, the examiner takes the position that opening with one hand or not would be a matter of the skill of the user. Furthermore, since no structural members are being set forth (i.e., within the independent claim 46) that provide the function of disengaging with only one hand, this function cannot be given patentable weight within an apparatus claim.

This is a ***Continuation*** of applicant's Application. All claims are drawn to the same invention and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

December 17, 2004

A handwritten signature in black ink, appearing to read 'Bruce A. Lev'. The signature is stylized with a large, looping 'B' and a cursive 'Lev'.

Bruce A. Lev

Primary Examiner

Group 3600